



RICK SNYDER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
Christopher Seppanen
Executive Director

SHELLY EDGERTON
DIRECTOR

[REDACTED]

Date Mailed: October 19, 2016
MAHS Docket No.: 16-005807
Agency No.: [REDACTED]
Petitioner: OIG
Respondent: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Darryl Johnson

HEARING DECISION FOR INTENTIONAL PROGRAM VIOLATION

Upon the request for a hearing by the Department of Health and Human Services (Department), this matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9, and in accordance with Titles 7, 42 and 45 of the Code of Federal Regulation (CFR), particularly 7 CFR 273.16 and 45 CFR 235.110; and with Mich Admin Code, R 400.3130 and 400.3178. After due notice, a telephone hearing was held on October 18, 2016, from Lansing, Michigan. The Department was represented by [REDACTED], Regulation Agent of the Office of Inspector General (OIG). The Respondent appeared on her own behalf. She also had with her [REDACTED], Clinical Director, who has been treating Respondent for undisclosed matters.

A hearing was previously held on June 21, 2016, by Administrative Law Judge Carmen G. Fahie. In a Decision dated July 12, 2016, ALJ Fahie found in favor of the Department. Respondent requested a hearing, and her request was granted.

ISSUES

1. Did Respondent receive an overissuance (OI) of Medical Assistance (MA) benefits that the Department is entitled to recoup?
2. Did the Department establish, by clear and convincing evidence, that Respondent committed an Intentional Program Violation (IPV)?

FINDINGS OF FACT

The Administrative Law Judge, based on the competent, material, and substantial evidence on the whole record, finds as material fact:

1. The Department's OIG filed a hearing request on February 11, 2016, to establish an OI of benefits received by Respondent as a result of Respondent having allegedly committed an IPV.
2. Respondent was a recipient of MA benefits issued by the Department.
3. Respondent was aware that she could not receive benefits from two states at the same time.
4. Respondent did not have an apparent physical or mental impairment that would limit the understanding or ability to comply with this restriction.
5. The Department's OIG indicates that the time period it is considering the fraud period is May 1, 2014, through August 31, 2014 (fraud period).
6. During the fraud period, Respondent was issued \$ [REDACTED] in MA benefits by the State of Michigan, and the Department alleges that Respondent was entitled to \$ [REDACTED] in such benefits during this time period.
7. The Department alleges that Respondent received an OI in MA benefits in the amount of \$ [REDACTED].
8. The Department alleges that Respondent was issued MA benefits by the State of New Mexico during the fraud period.
9. This was Respondent's first alleged IPV.
10. A notice of hearing was mailed to Respondent at the last known address and was not returned by the US Post Office as undeliverable.

CONCLUSIONS OF LAW

Department policies are contained in the Department of Health and Human Services Bridges Administrative Manual (BAM), Bridges Eligibility Manual (BEM), Adult Services Manual (ASM), and Reference Tables Manual (RFT).

The Medical Assistance (MA) program is established by Title XIX of the Social Security Act, 42 USC 1396-1396w-5; 42 USC 1315; the Affordable Care Act of 2010, the collective term for the Patient Protection and Affordable Care Act, Pub. L. No. 111-148, as amended by the Health Care and Education Reconciliation Act of 2010, Pub. L. No. 111-152; and 42 CFR 430.10-.25. The Department (formerly known as the Department of Human Services) administers the MA program pursuant to 42 CFR 435, MCL 400.10 and MCL 400.105-.112k. .

Effective January 1, 2016, the Department's OIG requests IPV hearings for the following cases:

- Willful overpayments of \$500.00 or more under the AHH program.
- FAP trafficking overissuances that are not forwarded to the prosecutor.
- Prosecution of welfare fraud or FAP trafficking is declined by the prosecutor for a reason other than lack of evidence, and
 - The total amount for the FIP, SDA, CDC, MA and FAP programs combined is \$500 or more, or
 - the total amount is less than \$500, and
 - the group has a previous IPV, or
 - the alleged IPV involves FAP trafficking, or
 - the alleged fraud involves concurrent receipt of assistance (see BEM 222), or
 - the alleged fraud is committed by a state/government employee.

BAM 720 (1/1/16), p. 12-13.

Intentional Program Violation

Suspected IPV means an OI exists for which all three of the following conditions exist:

- The client intentionally failed to report information **or** intentionally gave incomplete or inaccurate information needed to make a correct benefit determination, and
- The client was clearly and correctly instructed regarding his or her reporting responsibilities, and
- The client has no apparent physical or mental impairment that limits his or her understanding or ability to fulfill reporting responsibilities.

BAM 700 (1/1/16), p. 6; BAM 720, p. 1.

An IPV requires that the Department establish by clear and convincing evidence that the client has intentionally withheld or misrepresented information for the **purpose** of

establishing, maintaining, increasing or preventing reduction of program benefits or eligibility. BAM 720, p. 1 (emphasis in original); see also 7 CFR 273(e)(6). Clear and convincing evidence is evidence sufficient to result in a clear and firm belief that the proposition is true. See M Civ JI 8.01.

In this case, Respondent had been receiving MA and other benefits from New Mexico. She left New Mexico and traveled to Michigan in late June 2013, intending to return to New Mexico. In early July 2013 she decided she was not going to return to New Mexico. She testified that she called New Mexico's Human Services Department and asked them to close her case. She submitted a printout (Exhibit A) which shows notes of calls she made to New Mexico. According to the notes, on December 5, 2013, she asked "how she goes about getting case closure verification from New Mexico out in Michigan." She does not deny that she had been receiving MA from New Mexico when she moved to Michigan, but her position is that she tried to close the New Mexico MA before she applied for MA in Michigan. Inasmuch as her application in Michigan was not submitted until January 17, 2014 (Exhibit 1 Page 8), her position has merit.

Because she has submitted evidence that she sought to close her New Mexico MA before applying for Michigan MA, there is insufficient evidence to establish that she withheld any information for the purpose of receiving benefits she was not eligible to receive. While the Department has evidence (Exhibit 1 Page 51) that New Mexico continued to make MA available for her after she applied for Michigan MA, that is not an intentional act on her part.

Disqualification

A court or hearing decision that finds a client committed an IPV disqualifies that client from receiving program benefits. BAM 720, p. 15. A disqualified recipient remains a member of an active group as long as he/she lives with them, and other eligible group members may continue to receive benefits. BAM 720, p. 17.

Clients who commit an IPV are disqualified for a standard disqualification period except when a court orders a different period, or except when the OI relates to MA or FAP. BAM 720, p. 13. Refusal to repay will not cause denial of current or future MA if the client is otherwise eligible. BAM 710 (10/1/15), p. 2. Clients are disqualified for periods of one year for the first IPV, two years for the second IPV, lifetime disqualification for the third IPV, and ten years for a FAP concurrent receipt of benefits. BAM 720, p. 16.

There is no disqualification in the MA program. Even if there were a disqualification in the MA program, because there is insufficient evidence to prove an IPV, there is no basis for a disqualification

Overissuance

When a client group receives more benefits than entitled to receive, the Department must attempt to recoup the OI. BAM 700, p. 1.

In this case, there is no evidence that Respondent received an OI in the MA program, and therefore there is nothing to recoup.

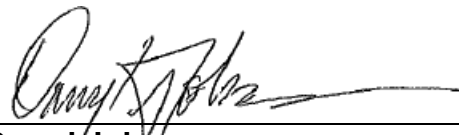
DECISION AND ORDER

The Administrative Law Judge, based upon the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, concludes that:

1. The Department has not established by clear and convincing evidence that Respondent committed an IPV.
2. Respondent did not receive an OI of MA program.

The Department is ORDERED to delete the OI and cease any recoupment action.

DJ/mc



Darryl Johnson
Administrative Law Judge
for Nick Lyon, Director
Department of Health and Human Services

NOTICE OF APPEAL: A party may appeal this Order in circuit court within 30 days of the receipt date. A copy of the circuit court appeal must be filed with the Michigan Administrative Hearing System (MAHS).

A party may request a rehearing or reconsideration of this Order if the request is received by MAHS within 30 days of the date the Order was issued. The party requesting a rehearing or reconsideration must provide the specific reasons for the request. MAHS will not review any response to a request for rehearing/reconsideration.

A written request may be mailed or faxed to MAHS. If submitted by fax, the written request must be faxed to (517) 335-6088; Attention: MAHS Rehearing/Reconsideration Request.

If submitted by mail, the written request must be addressed as follows:

Michigan Administrative Hearings
Reconsideration/Rehearing Request
P.O. Box 30639
Lansing, Michigan 48909-8139

DHHS

[REDACTED]

Petitioner

[REDACTED]

Respondent

[REDACTED]